No. 516

FEB 27

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

J. T. ROBERTS, *Appellant*,

vs.

RICHLAND IRRIGATION DISTRICT, an Irrigation District; C. J. BARNETT, W. A. STOCKMAN and W. C. MCINNIS, Directors of the Richland Irrigation District, an Irrigation District, and HARRY FORSYTH, Treasurer of Benton County, Washington; B. J. PACIUS, IRA C. HAWLEY and H. S. HUGHES, County Commissioners of Benton County, Washington, *Defendants*,

J. T. S. LYLE, DIX ROWLAND, CHARLES HEATH, T. H. BOWDEN and H. E. DAVENPORT, individually and as Trustees, *Interveners, Appellees.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR PERMISSION TO FILE BRIEF *and* BRIEF OF AMICI CURIAE

FRED J. CUNNINGHAM,
Old National Bank Building,
Spokane, Washington.

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Special Counsel for Erle J. Barnes as Director of the Department of Conservation and Development of the State of Washington, As Amici Curiae.

THE ARGUS PRESS - SEATTLE

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Special Counsel for Erle J. Barnes as Director of the Department of Conservation and Development of the State of Washington,
As Amici Curiae.

special counsel to file the attached brief as *amici curiae*, in the interests of the State of Washington.

The Attorney General of the State of Washington has found it impossible to file a brief as *amicus curiae* in accordance with the permission heretofore granted by this Court.

The conditions specified for a brief by the Attorney General have been complied with and said brief is submitted in lieu thereof under the executive authority of the state.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF AMICI CURIAE

STATEMENT

The undersigned, special counsel for Erle J. Barnes, as Director of the Department of Conservation and Development of the State of Washington, with the approval and under the direction of the Governor of said state, most respectfully submit the following brief as *amici curiae* in the instant case.

The interest of this state in court decisions affecting

irrigation districts is substantial. The statutes of the state authorize the expenditure of public funds in support of irrigation development. Remington's Revised Statutes of Washington (Ann.) Vol. 5, Title 16, Chap. 16. In furtherance of the purposes of the statute, the State of Washington, through the Department of Conservation and Development of said state has purchased bonds of irrigation districts and is now the owner and holder thereof. The state, therefore, is concerned in the instant case not only by reason of the public interest therein but by reason of its proprietary rights indirectly involved in this litigation.

ARGUMENT

Summary of Propositions Which the Argument Will Attempt to Sustain

1. The state has full and exclusive authority to determine what form improvement districts shall take and what plan of taxation shall be employed for their costs.

2. So long as the state exercises these discretionary powers in a reasonable manner and in furtherance of the public objects sought, it does not violate any provision of the Federal Constitution, even though inequalities and unfairness so far as private individuals are concerned, may result.

3. Under the rule announced in the *Fallbrook* case, the plan of apportionment of assessments provided for in the Irrigation District Act of the State of Washington is reasonable and does not violate any provision of the Federal Constitution.

Question Stated in Opinion of State Court

The principal question in the case at bar is found in the opinion of the state court, *Roberts v. Richland Irrigation District*, 169 Wash. 156, 13 Pac. (2nd) 437, at page 159 of the state report, as follows:

> "Assuming the legal organization of an irrigation district after notice and hearing upon the question of organization, boundaries, inclusions of land to be benefited and the total amount of benefits to all the lands within the district, is the individual landowner entitled to another hearing after due notice for the purpose of allocating to his land its just proportion of the benefits, and does the benefit thus allocated limit his liability to pay?"

Question As Stated By Appellant

The appellant states the question at page 10 of his brief as follows:

> "Does the Irrigation District statute of the State of Washington (Appendix i.) trangress the Fourteenth Amendment to the Federal Constitution, in that, by its express terms, and by judicial construction thereof, and by its application, it takes property without due process of law by authorizing the levy of assessments by an irrigation district in substantial excess of the benefits to the lands assessed, solely for the purpose of paying for benefits conferred upon the lands of others in the district who have defaulted in their payments?"

Segregation of Individual Benefits Not Required By State Statute

The inquiry then is whether the provisions of the Constitution of the United States require a segregation of the total aggregate benefits received by the lands of the district as a whole on account of a bond issue, under the laws of the State of Washington, into individual shares and an apportionment thereof to each tract of land for assessment purposes. The statute of the state does not provide for such segregation. The alleged necessity for this segregation of individual benefits, it appears, arises out of the theory that since under the Federal Constitution no landowner can legally be assessed for the cost of improvements in excess of the benefits conferred by the construction of such improvements, the landowner is entitled to an individual determination of this question to protect himself against exactions in excess of such benefits to his land.

Discretionary Powers of the State in Tax Matters

Generally speaking, the state has full and exclusive authority to determine what form improvement districts shall take and what plan of taxation shall be employed for their costs. The form of district authorized may be imperfect relatively speaking. The plan of taxation provided may result in inequality and unfairness so far as individual landowners are concerned. Yet these are matters of state discretion and in such matters the state is supreme.

Houck v. Little River Drainage District, 239 U. S. 254, 36 Sup. Ct. 58, 60 L. ed. 266.

The state, however, has limited some of its sovereign powers and delegated them to the Federal Government. This limitation is expressed in the Federal Constitution. This constitutional limitation was never calculated to, nor does it legally speaking, interfere with the discretionary powers of the state so long as those powers are exercised in a reasonable manner.

Statement of Federal Question Involved

The federal question involved here then is whether the plan of district taxation provided by the statutes of the State of Washington is so arbitrary in its nature as to amount to an unreasonable exercise on the part of the state of its discretionary powers within the meaning of the Federal Constitution as construed by this Court.

The state court has sustained this legislation in the case at bar.

Roberts v. Richland Irrigation District, 169 Wash. 156, 13 Pac. (2nd) 437.

The Challenge to the State Statute Is Limited to Those Provisions Relating to Assessments

As heretofore pointed out, the only provisions of the state statute in question, involved in the issue, are those relating to the plan of assessment against the lands in the district. This issue is fully discussed in the briefs of the respective parties with citation of appropriate supporting authorities. We shall not attempt to repeat or consider these discussions here. Our endeavor will be to call to the attention of the Court some of the practical aspects, which, we believe, should

be fully considered by the Court in reaching conclusions on the issues involved. While it may be said that the peculiar conditions surrounding irrigation district operation do not change the principles of law which govern special assessment taxation, yet, it is upon these things that the success of district development depends, and it is only with a consideration of these practical aspects that any proper solution of the legal problems involved can be found.

Specific Determination of Individual Benefits for Assessment Purposes Impracticable

The implication of the appellant's contention on appeal is that our state statute is unreasonable and unfair in that it makes no provision for a specific determination of the individual benefits accruing to each tract of land for assessment purposes. It is assumed in this connection by the appellant that individual benefits all arise at one and the same time and can readily be ascertained. We have a different conception of such benefits. Under the corporate plan of district operation, a particular improvement in itself does not create the benefit conferred. The benefit arises from the water and its continued availability for irrigation. The improvement is merely part of the means by which the water is made available. The benefits arise out of the district operation by means of which a corporate group of farmers are able to furnish water which could not be feasibly secured by one individual farmer working alone.

The appellant appears to contend that such benefits, as to an individual tract of land, are to be measured

by the enhancement of its market value immediately after the construction of the improvement financed by the bond issue (Par. IX App. Complaint, Tr. 4). It may be said, therefore, under this contention that for practical purposes, the assessing officers of the district are authorized to determine in advance the ultimate benefits of individual tracts of land independent of and without regard to the total aggregate benefits arising out of the bond issue and accruing to the lands of the district as a whole. This authority apparently is to be bestowed by judicial decree in the absence of specific statutory provision and the same is to be exercised by the assessing officials of the district after the bonds have been sold and without the consent or approval of the bondholders concerned.

The contention that the benefits accruing to the several tracts of land in the district shall be segregated for assessment purposes and determined at the beginning of the use of the improvement financed by the issuance and sale of bonds, it appears to us entirely disregards the corporate nature and the continuing operation of an irrigation district. Such a rule, in our opinion, is not necessary to meet the constitutional requirements of the Irrigation District Law.

It may be admitted that exactions levied by irrigation districts are in the nature of special assessments constitutionally justified by benefits conferred upon the property assessed.

Such a district, however, is more than a local improvement subdivision of the county. It has a governing body of its own, its officers are public officers and

it exercises very broad powers, including those relating to indebtedness and taxation.

Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 17 Sup. Ct. 56, 41 L. ed. 369.

In short, an irrigation district is a quasi municipal corporation, and the rules of law applied to municipal corporations are generally applied to such districts.

La Mesa etc. Dist. v. Halley (Cal.) 239 Pac. 719.

In the case of the ordinary local impovement district in a city the lands included generally have a distinct value apart from the contemplated improvement. In the case of the irrigation district the arid lands have little or no value without water. It is the water that gives value to the lands. Not only is it the water, but it is the water kept available for irrigation from time to time and from season to season, that maintains these values. The benefits which such lands receive from the irrigation improvements can never be accurately determined in advance. They depend entirely upon the successful operation of the district.

Lands sometimes become damaged by seepage and alkali. In such instances, it is manifestly unfair that the "tax-burdened" landowner should be foreclosed by a determination of benefits immediately after certain irrigation improvements are constructed.

The cost of the improvement in the case of an irrigation district is rarely apportioned at one time and in one assessment roll. The construction work is seldom done as a whole at one time. The development is progressive and done by units or by temporary construction which is later replaced by permanent works.

An authorized bond issue may be sold by the board of directors of the district from time to time in such quantities as may be necessary and most advantageous to the district. Remington's Revised Statutes of Washington (Ann.) Sec. 7433.

The rule of enhanced market value determined immediately after the construction of the improvement, as contended for by the appellant, is impracticable, inaccurate and unfair when applied to an irrigation district. The rule for the determination of benefits applied in the case of the ordinary unincorporated improvement district is ill adapted to the requirements of the irrigation district.

It is because of these practical necessities inherent in irrigation district operation, that the district statute provides for a different method of apportionment of benefits more in consonance with the requirements of arid land development.

Irrigation district bonds are corporate obligations. They are not specific liens on the individual tracts of private lands within the district, as is the case with the ordinary non-corporate local improvement bonds. Irrigation district bonds under our law are paid by annual levy against the lands in the district and the annual levy constitutes the only specific lien against the several tracts of private lands in the district.

It follows, therefore, that the constitutional provisions applicable to the determination of benefits received by the lands within an irrigation district are and must be satisfied in a somewhat different manner from that applicable in the case of the ordinary local improvement district, in which latter case the entire

obligation of the bond is direct, specific and several against each tract of land within the district.

In the case of a corporate improvement district such as an irrigation district with authority to issue general corporate obligation bonds, the question of benefits is a corporate one involving all the lands in the district as a whole. The constitutional requirements are fulfilled if the statutory method of determining such benefits is reasonable and the benefits to the entire district are equal to or greater than the amount of the liability imposed. When these requirements have been fulfilled, the individual landowner cannot call into question the district's total benefits. His only concern is whether his share of the annual exactions in relation to his neighbor's share is in accordance with the statute.

It is conceded that the aggregate benefits to the lands in the district equal the bonded debt, and it is conceded that the appellant's land has been benefited to some extent, the only thing remaining to be determined then is what share in relation to the other landowners in the district shall the appellant pay annually on account of the bonded indebtedness. The constitutional requirements have been met if the statute provides a reasonable method of apportioning this burden among the landowners involved.

Hagar v. Rec. Dist., 111 U. S. 701, 28 L. ed. 569.

Section 7436 of Remington's Revised Statutes of Washington (Ann.) provides that district assessments shall be made each year in *proportion* to the

benefits accruing to the lands assessed. The secretary of the district in preparing the annual assessment roll is required to specify in the appropriate column the *ratio* of benefits or when deemed more practicable the per acre value or the amount of benefits for assessment purposes.

In other sections of the statute provision is made for equalization of the annual assessment after notice given in the usual manner.

Our statute relating to assessments is set out at pages VI-X of Appendix to appellant's brief. We shall not burden the Court with a repetition of these sections of the statute here.

In the *Fallbrook* case, *supra*, 164 U. S. 112, 41 L. ed. 369, 394, it is stated with reference to the mode of levying assessments on the *ad valorem* basis as provided in the Wright Act of California:

> "Thus the act provides for a hearing of the landowner both as to the question whether his land will be benefited by the proposed irrigation, and when that has been decided in favor of the benefit, then upon the question of the valuation and assessment of and upon his land included in the district * * *. Our conclusion is that the act as construed with reference to the objections considered under this head is unassailable."

The underlying principle of apportionment provided for in our district law is not different so far as constitutional questions are concerned from that in the Wright Act considered in the *Fallbrook* case. We believe that our statute relating to the levy, equaliza-

tion and apportionment of district assessments meets all the constitutional requirements.

Rules Announced In the Fallbrook Case Applicable to Case at Bar

The appellant at page 66 of his brief sets out the following question:

> "Does individual maximum benefit limit individual liability to pay on the part of a landowner subject to special assessment in an irrigation district?"

The appellant concludes that this question was not presented by the facts in the *Fallbrook* case nor was it specifically decided in the case.

So far as the federal question involved here is concerned, namely: the extent to which the Federal Constitution limits the discretionary powers of a state to enact laws relating to the reclamation of its arid lands and to the methods of raising revenues therefor, we believe the *Fallbrook* case is in point in the instant case.

The *Fallbrook* case announces certain fundamental principles which are applicable to the case at bar. While this Court has many times since reannounced the rules announced in the *Fallbrook* case, it may yet be regarded as the outstanding authority of this Court on the subject with which it deals.

The plaintiff in the *Fallbrook* case was an alien owner of land in an irrigation district in the State of California. Her land was assessed by the district. She failed to pay the assessment. Her land was sold to the district for non-payment of the assessment.

After the sale and before the issuance of deed conveying the land in question to the district, she instituted an action in the Federal Court of that district to restrain the execution and delivery of any deed to the district because of the alleged invalidity of the act under which the sale was held (41 L. ed. 371).

Among other grounds, the validity of the irrigation district act involved was assailed in this Court by the landowner concerned on the ground that under the California act "the assessments are not based upon or apportioned according to benefits. Property not benefited is assessed and the burdens of assessment are perpetual and not limited to benefits" (41 L. ed. 375).

In dealing with this point, Justice Peckham, speaking for this Court, observes (41 L. ed. 394):

> "It is insisted that the basis of the assessment upon the lands benefited, for the cost of the construction of the works, is not in accordance with and in proportion to the benefits conferred by the improvement, and therefore there is a violation of the constitutional amendment referred to, and a taking of the property of the citizen without due process of law. * * * Assume that the only theory of these assessments for local improvements upon which they can stand is that they are imposed on account of the benefits received, and that no land ought in justice to be assessed for a greater sum than the benefits received by it, yet it is plain that the fact of the amount of benefits is not susceptible of that accurate determination which appertains to a dem-

onstration in geometry. Some means of arriving at this amount must be used, and the same method may be more or less accurate in different cases involving different facts. Some choice is to be made, and where the fact of some benefit accruing to all the lands has been legally found, can it be that the adoption of an ad valorem method of assessing the lands is to be held a violation of the Federal Constitution? It seems to us clearly not. It is one of those matters of detail in arriving at the proper and fair amount and proportion of the tax that is to be levied on the land with regard to the benefits it has received, which is open to the discretion of the state legislature, and with which this court ought to have nothing to do. The way of arriving at the amount may be in some instances inequitable and unequal, but that is far from rising to the level of a constitutional problem and far from a case of taking property without due process of law."

While the *Fallbrook* case involved the validity of a statute authorizing the apportionment of district assessments on an ad valorem basis, yet the rule of law announced applies with equal force to assessments apportioned on the ratio of benefits as under the law of the State of Washington. The apportionment under either law is based on benefits conferred. If a state statute providing for apportionment on an ad valorem basis does not violate the Federal Constitution, then it may be said with equal reason that a state statute providing for apportionment on the ratio of benefits does not violate the Federal Constitution. The rights

of the individual landowner are not more jeopardized under the Washington plan than under the other. The two states have exercised their respective discretions with respect to these matters, and we submit that under the rule announced in the *Fallbrook* case, the discretion exercised by the State of Washington in providing for apportionment of assessments on the ratio of benefits must be considered reasonable and not in violation of the Federal Constitution.

CONGRESS HAS APPROVED THE PRINCIPLE UNDERLYING THE APPORTIONMENT OF DISTRICT ASSESSMENTS AUTHORIZED BY THE WASHINGTON LAW FOR FEDERAL RECLAMATION PROJECTS.

The State of Washington has within its boundaries a number of Federal Reclamation projects administered under the provisions of the Federal Reclamation Act passed by the Congress June 17, 1902 (32 Stat. 390.) Federal funds have been and are being expended in the construction of these projects. This development is a matter of great public interest to the people of the state. Section 45 of the Act of Congress approved May 25, 1926, 44 Stat. 648, 43 U. S. C. A. Sec. 423d authorizing the Secretary of the Interior to turn over the collection of water charges to water-users' associations or irrigation districts, among other things provides:

> "The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract, shall require the execution of a contract by a water-users' association or irrigation district whereby such association or

irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project * * *."

CONCLUSION

It is submitted, therefore, that the State of Washington, in the exercise of its discretionary powers in dealing with the development of its arid lands, has adopted in its Irrigation District Act a plan of apportionment of assessments to defray the costs of such development which is reasonable under the existing conditions, and that the plan adopted does not violate any provision of the Federal Constitution.

Respectfully submitted,

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As Amici Curiae.